

1 least three issues that the Court should address before opening statements are made.

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3 **First, should the government be able to introduce evidence of how much money the**
4 **defendant will receive upon completion of the proceedings against him?** In the

5 Government's brief at page 3 the governments asserts that: "Under the terms of the "SV"
6 documents, Spangler Ventures (essentially Mark Spangler), as manager of the SV funds,
7 was entitled to twenty percent (20%) of the proceeds after the sale, liquidation, or disposal
8 of either company." Thus in the event that either Terahop or Tamarac was sold, Spangler
9 stood to gain millions. In fact, after the receiver sold Tamarac, Spangler Ventures/Mark
10 Spangler was due to receive approximately \$2 million, as its share of the profits of this
11 sale. As of today, Spangler has not relinquished claim to some of this money, and
12 apparently hopes to receive approximately \$400,000 following completion of legal
13 proceedings against him." Regarding the Government's assertion as to the \$400,000, the
14 evidence is not relevant under Rule 401 and prejudicial under Rule 403. It has no
15 probative value. If there is any relevance at all, it is outweighed by the danger of unfair
16 prejudice, confusing the issues, and misleading the jury under Rule 403. A jury may
17 believe that unless they find the defendant guilty Mr. Spangler will take an additional
18 amount of money from his investors. It gives the jury an incentive to find him guilty.
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23 **Second, should the government be able to introduce evidence of Mr. Spangler's**
24 **intent to move to Ecuador?** At page 5 of the Government's brief, it suggests that the

25 Government expects to offer proof of Mr. Spangler's intent to "escape" to Ecuador. The
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1 Government's claim is fundamentally untrue. There was no intent to "escape" to
 2 anywhere. Mr. Spangler sat down with his lawyers at Lane Powell and talked about the
 3 future. Those lawyers told him that there could be years of litigation, that Mr. Spangler
 4 would not be able to work, and that he should actively try to reduce his expenses to as low
 5 as possible. He explored various options and discussed those options with his lawyers.
 6 Costa Rica, Ecuador, and other options were suggested. Those options were discussed
 7 and Mr. Spangler told his lawyers that he was considering Ecuador. The decision had
 8 nothing to do with "escaping".
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10 The evidence is not probative of a material fact under Rule 401. It creates a
 11 substantial danger of unfair prejudice, confusing the issues, and misleading the jury under
 12 Rule 403.
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 15 **Third, should the Government be allowed to argue that this was a "Ponzi" scheme?**

16 The Government's trial brief, at page 4, makes it clear how unfair it is to use the term
 17 "Ponzi" to describe Mr. Spangler's actions. The conduct that the Government describes at
 18 page 4 of its brief is both legal and appropriate. The Government's brief claims that Mr.
 19 Spangler began his "Ponzi" scheme when he used "his client's pooled funds to pay
 20 phantom interest payments and dividends back to themselves and to other clients." The
 21 conduct attributed to Spangler is conduct that occurs every day in the world of business.
 22 When a start up business borrows money from a bank the company owes both interest
 23 and principal on the debt. The start up often has no revenues and no profit. The business
 24 is permitted to pay interest to the bank using the bank's own money. There is nothing
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1 illegal about that. The government tries to make it sound evil by calling it a Ponzi scheme.
2 The term "Ponzi" used in this context is unfair and will have a tendency to mislead the jury.

3 Next, at page 5, the Government again misuses the term "Ponzi". It claims the
4 second part of the "Ponzi" scheme was when Spangler tried to raise funds to liquidate an
5 investor's interest in a fund. Again, there is nothing illegal nor improper about doing what
6 Mr. Spangler did. It is perfectly fine to find other investors if the company needs money. A
7 company can have a need for money for a variety of reasons. It may need money to pay
8 for software development. It may need money to pay for bookkeeping services. It may
9 need money to pay interest on a loan. There is nothing improper about raising money for
10 business purposes. Additionally a company, if it is a young start up, may have investors
11 come and go. Depending on the liquidity of the company, if an investor wants to withdraw
12 from the investment and sell his stock back to the company, there is nothing wrong with
13 raising money to accomplish that purpose. If the company wants to redeem an investor it
14 can take money from profits, it can borrow money from a bank, or it can obtain money by
15 selling stock. It is both legal and appropriate to do that. The Government tries, again, to
16 make it sound evil by calling it a "Ponzi" scheme. It is a brazen attempt to prejudice the
17 jury. The Government's use of the term "Ponzi" is inappropriate in this case and should be
18 excluded under Rule 403.
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21 Again, it should be noted that the circumstances of this case are dramatically
22 different than the case against Charles Ponzi. To call it a Ponzi scheme has the same
23 effect and impact as calling it a Jeffrey Dahmer scheme. The only reason to do that would
24 be to prejudice the jury. The Government can offer it's proof, but should not be allowed to
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1 label the conduct with another defendant's name to make it sound evil.

2 Respectfully submitted this 11th day of October, 2013.

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6 Counsel for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the government. I hereby certify that I have served the attorneys of record for the government that are non CM/ECF participants via United States Mail, postage prepaid.

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